

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 1690, GPO Brooklyn, N.Y. 11202

Date: APR 15 1987

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

We have reviewed the application of your organization, [REDACTED], Incorporated and from the evidence submitted have found that your organization was incorporated in the State of [REDACTED] on [REDACTED].

Your organization was formed for the following purposes:

To conduct, operate and maintain a golf club for its members, and in furtherance of this purpose to lay out, to build, to maintain facilities for the sports and recreation of its members; to establish and own golf courses and the necessary equipment for same and to purchase or lease and to maintain and operate buildings, club houses or other structures and equipment as may be incidental to the above purposes; and to do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law.

You have indicated that your primary activity is to receive income in order to cover the expenses necessary to maintain, operate and "improve the grounds and the golf course itself, and the buildings and facilities as time and funds permit". Income is chiefly derived from dues from members, golf cart rentals and green fees resulting from public use.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

In Revenue Ruling 78-85, 1978-1 C.B. 150, a non-profit organization formed by residents of a city to help preserve, beautify and maintain a public park located in the city and supported by membership dues and contributions from the general public was held to be operated exclusively for charitable purposes and thus qualified for exemption under section 501(c)(3) of the Internal Revenue Code. The organization used volunteers to carry out its exempt purposes and the park and facilities as well as membership was open to the general public. It was held that through its activities, the organization was "insuring the continued use of the park for public recreational purposes" which has been recognized as "appropriate means of furthering charitable purposes." Furthermore, any private benefits derived by nearby property owners do not lessen the public benefits and are only incidental to the execution of the exempt purposes of the organization.

One of the primary issues concerning the eligibility of [REDACTED] [REDACTED]'s exemption under section 501(c)(3) lies in whether the organization is both "organized" and "operated" for an exempt purpose specified therein. The corporation is organized and operated for the benefit of its members. Unlike the organization in Revenue Ruling 78-85, whatever public benefit is derived appears to be incidental and limited to those paying green fees or other individuals specified in the By-Laws. In addition, membership does not appear to be open to the general public as it is subject to approval by existing members.

It is for these reasons that [REDACTED] [REDACTED] does not appear to be organized and operated exclusively for charitable purposes within the scope of section 501(c)(3) of the Internal Revenue Code.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the code and propose to deny your request for exemption under that section.

We have also determined that you fail to qualify for exempt status under any other subsection of IRC 501(c).

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination you may protest in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completions.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

A solid black rectangular box used to redact the signature of the District Director.

District Director

Enclosure: Publication 892